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HOUSE BILL 267

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

WILLIAM E. PORTER

AN ACT

RELATING TO WRONGFUL IMPRISONMENT; AMENDING SECTIONS OF THE TORT CLAIMS ACT; ENACTING THE WRONGFUL IMPRISONMENT ACT; PROVIDING COMPENSATION FOR CERTAIN WRONGFUL IMPRISONMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 8 of this act may be cited as the "Wrongful Imprisonment Act".

Section 2. [NEW MATERIAL] WAIVER OF IMMUNITY-- INITIATING SUIT-- VENUE-- RISK MANAGEMENT DIVISION RESPONSIBILITY. --

A. The state's immunity from liability is waived with respect to certain wrongful imprisonment claims to the extent of and in accordance with the terms and conditions of the Wrongful Imprisonment Act.

B. A suit shall be initiated by filing a verified

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1 petition in the district court for Santa Fe county that alleges
2 facts sufficient to show that the petitioner is entitled to
3 compensation under the Wrongful Imprisonment Act.

4 C. Service shall be made upon the attorney general
5 and the director of the risk management division of the general
6 services department. The risk management division shall provide
7 a defense and pay any compensation due through judgment or
8 settlement.

9 Section 3. [NEW MATERIAL] PERSONS ELIGIBLE FOR
10 COMPENSATION. -- A person is eligible for compensation under the
11 Wrongful Imprisonment Act if the person:

12 A. has served in whole or in part a sentence in
13 prison under the laws of this state;

14 B. pleaded not guilty to the charge for which he was
15 convicted and that led to the imprisonment;

16 C. is not guilty of the crime for which he was
17 sentenced; and

18 D. has received a full pardon for the crime and
19 punishment for which he was sentenced, based on his wrongful
20 conviction.

21 Section 4. [NEW MATERIAL] INSUFFICIENT DEFENSES. -- It is
22 not a defense to an action brought under the Wrongful
23 Imprisonment Act that:

24 A. a judgment of conviction was entered, which
25 resulted in the claimant's imprisonment; or

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1 B. an indictment, information, complaint or other
2 formal accusation was made.

3 Section 5. [NEW MATERIAL] ADMISSIBLE EVIDENCE. --

4 A. In the suit, the court may admit as evidence the
5 record of the trial at which the petitioner was convicted and
6 the pardon or proclamation issued to him by the governor.

7 B. The court may also admit all court papers,
8 orders, docket notations or other writings of record in any
9 court in this state as proof of the facts set forth in the
10 writings and any other relevant evidence.

11 Section 6. [NEW MATERIAL] DAMAGES--LIMITATION. --

12 A. If the trier of fact finds that the claimant is
13 entitled to compensation, the trier of fact shall assess damages
14 to compensate the claimant fairly and reasonably for:

15 (1) physical and mental pain and suffering
16 sustained by him as a proximate result of the erroneous
17 conviction or imprisonment from the time of the conviction by
18 the trial court; and

19 (2) all reasonable and necessary medical
20 expenses incurred by him as a proximate result of the erroneous
21 conviction or imprisonment from the time of the conviction by
22 the trial court.

23 B. Damages assessed for physical and mental pain and
24 suffering may not exceed fifty thousand dollars (\$50,000).

25 Total damages assessed under this section may not exceed one

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1 hundred thousand dollars (\$100,000).

2 Section 7. [NEW MATERIAL] LIMITATION OF ACTIONS. -- A
3 person who claims compensation under the Wrongful Imprisonment
4 Act must bring the action within two years after the date the
5 person is pardoned by the governor based on his wrongful
6 conviction. Action is barred thereafter.

7 Section 8. [NEW MATERIAL] REMEDY NOT EXCLUSIVE. -- The
8 remedies provided under the Wrongful Imprisonment Act are not
9 exclusive and do not preclude recovery under any other statute
10 or common-law cause of action.

11 Section 9. Section 41-4-4 NMSA 1978 (being Laws 1976,
12 Chapter 58, Section 4, as amended) is amended to read:

13 "41-4-4. GRANTING IMMUNITY FROM TORT LIABILITY--
14 AUTHORIZING EXCEPTIONS. --

15 A. A governmental entity and any public employee
16 while acting within the scope of duty are granted immunity from
17 liability for any tort except as waived by Sections 41-4-5
18 through 41-4-12 NMSA 1978 and the Wrongful Imprisonment Act.
19 Waiver of ~~[this]~~ immunity under Sections 41-4-5 through 41-4-12
20 NMSA 1978 shall be limited to and governed by the provisions of
21 Sections 41-4-13 through 41-4-25 NMSA 1978. Waiver of immunity
22 under the Wrongful Imprisonment Act shall be limited to and
23 governed by that act.

24 B. Unless an insurance carrier provides a defense, a
25 governmental entity shall provide a defense, including costs and

1 attorneys' fees, for any public employee when liability is
2 sought for:

3 (1) any tort alleged to have been committed by
4 the public employee while acting within the scope of his duty;
5 or

6 (2) any violation of property rights or any
7 rights, privileges or immunities secured by the constitution and
8 laws of the United States or the constitution and laws of New
9 Mexico when alleged to have been committed by the public
10 employee while acting within the scope of his duty.

11 C. A governmental entity shall pay any award for
12 punitive or exemplary damages awarded against a public employee
13 under the substantive law of a jurisdiction other than New
14 Mexico, including but not limited to other states, territories
15 and possessions and the United States of America, if the public
16 employee was acting within the scope of his duty.

17 D. A governmental entity shall pay any settlement or
18 any final judgment entered against a public employee for:

19 (1) any tort that was committed by the public
20 employee while acting within the scope of his duty; or

21 (2) a violation of property rights or any
22 rights, privileges or immunities secured by the constitution and
23 laws of the United States or the constitution and laws of New
24 Mexico that occurred while the public employee was acting within
25 the scope of his duty.

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1 E. A governmental entity shall have the right to
2 recover from a public employee the amount expended by the public
3 entity to provide a defense and pay a settlement agreed to by
4 the public employee or to pay a final judgment if it is shown
5 that, while acting within the scope of his duty, the public
6 employee acted fraudulently or with actual intentional malice
7 causing the bodily injury, wrongful death or property damage
8 resulting in the settlement or final judgment.

9 F. Nothing in Subsections B, C and D of this section
10 shall be construed as a waiver of the immunity from liability
11 granted by Subsection A of this section or as a waiver of the
12 state's immunity from suit in federal court under the eleventh
13 amendment to the United States constitution.

14 G. The duty to defend as provided in Subsection B of
15 this section shall continue after employment with the
16 governmental entity has been terminated if the occurrence for
17 which damages are sought happened while the public employee was
18 acting within the scope of duty while [~~the public employee was~~
19 in the employ of the governmental entity.

20 H. The duty to pay any settlement or any final
21 judgment entered against a public employee as provided in this
22 section shall continue after employment with the governmental
23 entity has terminated if the occurrence for which liability has
24 been imposed happened while the public employee was acting
25 within the scope of his duty while in the employ of the

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1 governmental entity.

2 I. A jointly operated public school, community
3 center or athletic facility that is used or maintained pursuant
4 to a joint powers agreement shall be deemed to be used or
5 maintained by a single governmental entity for the purposes of
6 and subject to the maximum liability provisions of Section
7 41-4-19 NMSA 1978.

8 J. For purposes of this section, a "jointly operated
9 public school, community center or athletic facility" includes a
10 school, school yard, school ground, school building, gymnasium,
11 athletic field, building, community center or sports complex
12 that is owned or leased by a governmental entity and operated or
13 used jointly or in conjunction with another governmental entity
14 for operations, events or programs that include sports or
15 athletic events or activities, child-care or youth programs,
16 after-school or before-school activities or summer or vacation
17 programs at the facility."

18 "Section 10. Section 41-4-17 NMSA 1978 (being Laws 1976,
19 Chapter 58, Section 15, as amended) is amended to read:

20 "41-4-17. EXCLUSIVENESS OF REMEDY. --

21 A. The Tort Claims Act shall be the exclusive remedy
22 against a governmental entity or public employee for any tort
23 for which immunity has been waived under the Tort Claims Act,
24 except for claims filed under the Wrongful Imprisonment Act, and
25 no other claim, civil action or proceeding for damages, by

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1 reason of the same occurrence, may be brought against a
2 governmental entity or against the public employee or his estate
3 whose act or omission gave rise to the suit or claim. No rights
4 of a governmental entity to contribution, indemnity or
5 subrogation shall be impaired by this section, except a
6 governmental entity or any insurer of a governmental entity
7 shall have no right to contribution, indemnity or subrogation
8 against a public employee unless the public employee has been
9 found to have acted fraudulently or with actual intentional
10 malice causing the bodily injury, wrongful death, property
11 damage or violation of rights, privileges or immunities secured
12 by the constitution and laws of the United States or the
13 constitution and laws of New Mexico resulting in the settlement
14 or final judgment. Nothing in this section shall be construed
15 to prohibit any proceedings for mandamus, prohibition, habeas
16 corpus, certiorari, injunction or quo warranto.

17 B. The settlement or judgment in an action under the
18 Tort Claims Act shall constitute a complete bar to any action by
19 the claimant by reason of the same occurrence against a
20 governmental entity or the public employee whose negligence gave
21 rise to the claim.

22 C. No action brought pursuant to the provisions of
23 the Tort Claims Act or the Wrongful Imprisonment Act shall name
24 as a party any insurance company insuring any risk for which
25 immunity has been waived by that act. "

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1 Section 11. Section 41-4-20 NMSA 1978 (being Laws 1978,
2 Chapter 166, Section 3, as amended) is amended to read:

3 "41-4-20. COVERAGE OF RISKS--INSURANCE. --

4 A. It [~~shall be~~] is the duty of governmental
5 entities to cover every risk for which immunity has been waived
6 under the provisions of the Tort Claims Act, the Wrongful
7 Imprisonment Act or any liability imposed under Section 41-4-4
8 NMSA 1978 as follows:

9 (1) local public bodies shall cover every such
10 risk or liability as follows:

11 (a) for a risk for which immunity has
12 been waived pursuant to Sections 41-4-9, 41-4-10 and 41-4-12
13 NMSA 1978, the local public body shall cover the risk, and for
14 any commercially uninsurable risk for which public liability
15 fund coverage is made available, the local public body may
16 insure the risk in accordance with the provisions of Section
17 41-4-25 NMSA 1978;

18 (b) for excess liability for damages
19 arising under and subject to the substantive law of a
20 jurisdiction other than New Mexico, including but not limited to
21 other states, territories and possessions and the United States
22 [~~of America~~], the local public body shall provide coverage in
23 accordance with the provisions of Subsection B of Section
24 [~~41-4-27~~] 41-4-28 NMSA 1978, if coverage is available; and

25 (c) for a risk or liability not covered

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1 pursuant to Subparagraphs (a) and (b) of this paragraph, the
2 local public body shall purchase insurance, establish reserves
3 or provide a combination of insurance and reserves or provide
4 insurance in any other manner authorized by law; and

5 (2) for state agencies, the risk management
6 division shall insure or otherwise cover every such risk or
7 liability in accordance with the provisions of Section 41-4-23
8 NMSA 1978. Coverage shall include but is not limited to
9 coverage for all such liability arising under and subject to the
10 substantive law of a jurisdiction other than New Mexico,
11 including but not limited to other states, territories and
12 possessions and the United States [~~of America~~].

13 B. The department of finance and administration
14 shall not approve the budget of any governmental entity that has
15 not budgeted an adequate amount of money to insure or otherwise
16 cover pursuant to this section or Section 3-62-2 NMSA 1978 every
17 risk of the governmental entity for which immunity has been
18 waived under the provisions of the Tort Claims Act or liability
19 imposed under Section 41-4-4 NMSA 1978. The [~~public school~~
20 ~~finance division of the department of finance and~~
21 ~~administration~~] state department of public education shall not
22 approve the budget of any school district [~~which~~] that has
23 failed to budget sufficient revenues to insure or otherwise
24 cover pursuant to this section every risk for which immunity has
25 been waived pursuant to the provisions of the Tort Claims Act or

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1 liability imposed under Section 41-4-4 NMSA 1978.

2 C. No liability insurance may be purchased by any
3 governmental entity other than as authorized by the Tort Claims
4 Act. "

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